



U.S. Department
of Transportation
**Federal Highway
Administration**

Memorandum

Subject **INFORMATION:** Applicability of Davis-Bacon
to Transportation Enhancement Projects

Date: JUL 28 1994

From Acting Chief, Construction and
Maintenance Division

Reply to
Attn of HNG-22

To Mr. Andy Hughes
Director, Office of Engineering Services (HES-04)
Atlanta, Georgia

Your June 1 memorandum transmitted a request from the Alabama Division Office for guidance on the applicability of Davis-Bacon (D-B) wage rates to transportation enhancement projects. The following information is provided in response to this request.

The D-B predetermined minimum wage must be paid to all covered workers on Federal-aid projects exceeding \$2,000 that are located on a Federal-aid highway. Title 23 defines a Federal-aid highway as any highway eligible for Federal-aid, other than highways classified as local roads or rural minor collectors. The D-B requirements do not apply to force account work performed by highway agency forces.

The applicability of D-B to a transportation enhancement project is dependent on the relationship or linkage of the project to a Federal-aid highway. If the project is "linked" to a Federal-aid highway based on proximity or impact (i.e., without the Federal-aid highway the project would not exist), then D-B requirements apply. Examples of such projects include the removal of outdoor advertising, a wetland to filter highway drainage, etc.

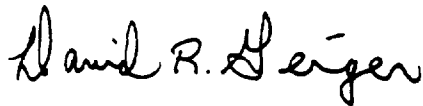
If the project is not "linked" to a particular Federal-aid highway and is eligible based solely on function (i.e., a transportation facility, such as an independent bike path, the restoration of a railroad station, etc.), then the D-B requirements do not apply. However, the D-B requirements apply to all projects greater than \$2,000 that are physically located within the existing right-of-way of a Federal-aid highway, regardless of the transportation enhancement characteristics.

Another D-B related issue, which has been raised on several occasions, is the acceptability of using volunteer labor on transportation enhancement projects. The Department of Labor states in its Field Operations Handbook (§15e23): "There are no exceptions to D-B coverage for volunteer labor unless an exception is specifically provided for in the particular D-B Related Act under which the project funds are derived." The D-B Related Act for the



Federal-aid Highway Program (23 U.S.C. §113) is silent on this subject. Therefore, on transportation enhancement projects subject to D-B coverage, a contractor or subcontractor may not use volunteer labor. On the other hand, a State highway or local government agency may use volunteer laborers under their direct control as a force account effort.

If you have further questions on the matter, please contact Mr. Robert S. Wright of my staff at (202) 366-1558.

A handwritten signature in cursive script that reads "David R. Geiger". The signature is written in dark ink and is positioned above the printed name.

David R. Geiger